Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (sued as the administratrix of the estate of Bhagwan Singh s/o Sohan Singh, deceased)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02–468 OF 2003
TENGKU BAHARUDIN SHAH, ABDUL MALIK ISHAK AND WAN ADNAN MUHAMAD JJCA
30 SEPTEMBER 2009

Civil Procedure — Appeal — Appeal to Court of Appeal — Failure to obtain leave of Court of Appeal before proceeding with appeal — Whether subject matter of claim less than RM250,000 — Whether leave required when claim was for specific relief — Courts of Judicature Act 1964 s 68(1)(a)

Civil Procedure — Estoppel — Preliminary objection raised during appeal — Whether failure to give earlier notice of legal impediment attracted estoppel

In 1963, the appellant and his late brother ('the deceased'), had jointly purchased a house in Penang ('the property') which was registered in their joint names. In 1965, the deceased was alleged to have sold his undivided half share in the property to the appellant but the transfer of the property had not been effected in the appellant's name. Upon the deceased's death the respondent became the administrator of the deceased's estate. In 1998 the appellant filed an action against the respondent seeking, inter alia, for a declaration that he was the beneficial owner of the property and for an order that the respondent as the administrator of the deceased's estate be ordered to transfer the half share held by the deceased to the appellant by executing a valid and registrable transfer of the same. The High Court dismissed the appellant's claim with costs. This was the appellant's appeal against that decision. The respondent raised a preliminary objection to the appeal under s 68(1)(a) of the Courts of Judicature Act 1964 ('the Act'). The respondent contended that as the subject matter of the claim had been quantified and valued at less than RM250,000, leave of this court was required before an appeal could proceed to this court. Since such leave had not been obtained by the appellant, it was the respondent's contention that the appeal was incompetent. In response the appellant filed his application for leave to appeal under s 68(1)(a) of the Act wherein he maintained that the subject matter of his claim was more than RM250,000. The appellant further submitted that no leave was required in this case because his claim was for specific relief and urged the court to regularise the appeal.

Held, upholding the preliminary objection, dismissing the appellant's application for leave and dismissing the appeal:

(1) (per **Tengku Baharuddin Shah JCA** and per **Abdul Malik Ishak JCA**) The value of the subject matter of the claim as pleaded was below the statutory trigger. The appellant's own standpoint as gathered from his own pleading and testimony put its worth below the statutory trigger. The deceased's half undivided share in the property amounted to RM248,500 and the letters of administration granted to the defendant showed the value of the subject matter of the claim to be RM248,500. In addition during cross-examination the appellant had said that his neighbours had sold their property for RM160,000. The determinant factor is the value of the subject matter as disclosed in the claim when filed and applying that test the appellant must necessarily obtain the leave of this court to pursue his appeal (see paras 14, 15, 28, 29).

(2) (per **Tengku Baharuddin Shah JCA**) As to whether leave was required in the case of a claim for specific relief, as in this case for a declaration, s 68(1)(a) of the CJA makes no exception for such a case. Further, the Court of Appeal Practice Direction No 2 of 1996, which listed the instances when the prior consent of this court was not necessary before a notice of appeal may be filed, did not apply to the present case. This Practice Direction applied only to declarations respecting subject matters that had no value attached to them or those with values that could not be quantified. As the subject matter of the claim in this case had been identified and its value determined the question of declaration became a non-issue and the failure to obtain the leave of this court to appeal was thus fatal (see paras 17–18).

(3) (per **Tengku Baharuddin Shah JCA**) The respondent's failure to give earlier notice of the legal impediment did not attract an estoppel. A point of law could be raised at any stage with or without notice (see para 19).

(4) (per **Tengku Baharuddin Shah JCA**) Although the appellant took the stand that the value of his claim was more than RM250,000, he provided the court with no material to merit the exercise of its discretion in his favour. On the contrary, the pleadings and the evidence quantified the value of the claim from the appellant's own standpoint to be well below RM250,000. Further, the court could not regularise the appeal because the issue in the present case was not one of irregularity but a question of jurisdiction, which was an issue of substance (see para 19).

(5) (per **Abdul Malik Ishak JCA**) The appellant's application for leave to appeal was filed at the 11th hour and should be dismissed (see para 35).

[Bahasa Malaysia summary

Pada tahun 1963, perayu dan mendiang abangnya ('si mati'), telah membeli bersama sebuah rumah di Pulau Pinang ('hartanah tersebut') yang telah didaftarkan atas nama mereka berdua. Pada tahun 1965, si mati dikatakan telah menjual separuh daripada bahagiannya yang tidak dibahagikan dalam hartanah tersebut kepada perayu tetapi pindah milik hartanah tersebut tidak dapat dilaksanakan atas nama perayu. Setelah kematian si mati responden telah menjadi pentadbir harta pusaka si mati. Pada tahun 1998 perayu telah memfailkan tindakan terhadap responden memohon, antara lain, untuk satu deklarasi bahawa dia merupakan pemilik benefisiari ke atas hartanah tersebut dan untuk perintah agar responden sebagai pentadbir harta pusaka si mati diperintahkan untuk memindah milik separuh daripada bahagian yang dipegang oleh si mati kepada perayu melalui pelaksanaan pindah milik sama yang sah dan boleh didaftarkan. Mahkamah Tinggi telah menolak tuntutan perayu dengan kos. Ini adalah rayuan perayu terhadap keputusan tersebut. Responden telah menimbulkan bantahan awal terhadap rayuan itu di bawah s 68(1)(a) Akta Mahkamah Kehakiman 1964 ('AMK'). Responden menegaskan bahawa memandangkan perkara pokok tuntutan telah dinyatakan kuantitinya dan dinilai kurang daripada RM250,000, kebenaran mahkamah ini diperlukan sebelum rayuan boleh dikemukakan ke mahkamah ini. Oleh kerana kebenaran sebegini tidak diperoleh oleh perayu, adalah pendapat responden bahawa rayuan itu tidak kompeten. Dalam menjawab perayu telah memfailkan permohonannya untuk kebenaran untuk merayu di bawah s 68(1)(a) AMK di mana dia mengekalkan bahawa perkara pokok tuntutannya adalah lebih daripada RM250,000. Perayu selanjutnya menghujahkan bahawa tiada kebenaran diperlukan dalam kes ini kerana tuntutannya adalah untuk relief spesifik dan mendesak mahkamah membenarkan rayuan itu.

Diputuskan, mengekalkan bantahan awal, menolak permohonan perayu untuk kebenaran dan menolak rayuan:

(1) (oleh **Tengku Baharuddin Shah HMR** dan **Abdul Malik Ishak HMR**) Nilai perkara pokok tuntutan sepertimana yang dirayukan adalah di bawah picu statutori. Sudut pandangan perayu sendiri sepertimana dikumpulkan daripada pliding dan testimoninya adalah di bawah picu statutori. Separuh daripada bahagian si mati yang tidak dibahagikan dalam hartanah tersebut berjumlah RM248,500 dan surat wakil pentadbiran yang diberikan kepada defendan menunjukkan nilai perkara pokok tuntutan adalah RM248,500. Tambahan pula semasa pemeriksaan balas perayu telah menyatakan bahawa jirannya telah menjual hartanah mereka pada harga RM160,000. Faktor penentu adalah nilai perkara pokok sebagaimana yang dikemukakan dalam tuntutan apabila difailkan dan dengan menggunakan ujian itu perayu

perlulah memperoleh kebenaran mahkamah untuk meneruskan rayuannya (lihat perenggan 14, 15, 28, 29).

(2) (oleh **Tengku Baharuddin Shah HMR**) Berhubung sama ada kebenaran diperlukan dalam kes tuntutan untuk relief spesifik, seperti dalam kes ini untuk deklarasi, s 68(1)(a) AMK tidak membuat pengecualian untuk kes sebegini. Bahkan, Arahan Amalan Mahkamah Rayuan No 2 Tahun 1996, yang memberi senarai keadaan bila kebenaran terdahulu mahkamah ini tidak perlu sebelum notis rayuan boleh difailkan, tidak terpakai dalam kes ini. Arahan Amalan hanya terpakai untuk deklarasi-deklarasi berkaitan perkara-perkara pokok yang tiada nilai terletak padanya atau yang mempunyai nilai yang tidak boleh dinyatakan kuantitinya. Oleh kerana perkara pokok tuntutan dalam kes ini telah dikenal pasti dan nilainya telah ditentukan persoalan tentang deklarasi tidak menjadi isu dan kegagalan untuk memperoleh kebenaran mahkamah ini untuk merayu tidak dapat dielakkan (lihat perenggan 17–18).

(3) (oleh **Tengku Baharuddin Shah HMR**) Kegagalan responden untuk memberikan notis lebih awal tentang halangan di sisi undang-undang tidak memerlukan estopel. Perkara undang-undang yang boleh ditimbulkan pada mana-mana peringkat dengan atau tanpa notis (lihat perenggan 19).

(4) (oleh **Tengku Baharuddin Shah HMR**) Meskipun perayu mempertahankan bahawa nilai tuntutannya adalah lebih daripada RM250,000, dia tidak mengemukakan apa-apa bahan kepada mahkamah untuk mewajarkan pelaksanaan budi bicara mahkamah bagi menyebelahi pihaknya. Sebaliknya, pliding dan keterangan menyatakan kuantiti nilai tuntutan berdasarkan sudut pandangan perayu sendiri yang kurang daripada RM250,000. Bahkan, mahkamah tidak membenarkan rayuan kerana isu dalam kes ini bukan di luar aturan tetapi persoalan bidang kuasa, yang bukan isu penting (lihat perenggan 19).

(5) (oleh **Abdul Malik Ishak HMR**) Permohonan perayu untuk kebenaran merayu telah difailkan di saat akhir dan patut ditolak (lihat perenggan 35).]

Notes

For cases on appeal to Court of Appeal, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 742–748.

For cases on estoppel in general, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2598–2599.

Cases referred to

Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh [1996] 2 MLJ 329, CA (refd)

Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors [1995] 2 MLJ 549, FC (refd)

Lam Kong Co Ltd v Thong Guan Co Pte Ltd [2000] 1 MLJ 129; [2000] 1 CLJ 1, CA (refd)

Lam Kong Co Ltd v Thong Guan Co Pte Ltd [2000] 4 MLJ 1, FC (refd)

Malayan Banking Bhd v Basarudin bin Ahmad Khan [2007] 1 MLJ 613; [2004] 4 CLJ 596, FC (refd)

Mohd Tahir b Mohd Sheriff v Ramlah bt Abdullah [2004] 6 AMR 165, CA (refd)

Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 1 MLJ 136; [1997] 1 AMR 785, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 68, 68(1)(a), 96(a)

Appeal from: Civil Suit No 22–471 of 1998 (High Court, Pulau Pinang)

Mahinder Singh Dulku (Mahinder Singh Dulku & Co) for the appellant.
Balwant Singh Purba (Balwant Singh & Co) for the respondent.

Tengku Baharudin Shah JCA:

[1] We dismissed this appeal with costs consequent to our decisions to uphold the respondent's preliminary objection pertaining to its competency for failure to obtain leave of this court under s 68 of the Courts of Judicature Act 1964 ('CJA') and to dismiss the appellant's 11th hour notice of motion in encl 10a ('encl 10a') for leave to appeal under the same section. We now give our reasons.

BACKGROUND

[2] In 1963, the appellant and his deceased brother (the respondent's late husband) jointly purchased a house in Penang (the said property) and had it registered in their joint names. It was used as a family residence and occupied by their parents and siblings. The deceased was alleged to have sold his half undivided share in the said property (the disputed property) to the appellant in early 1965 and in 1966 his wife, the respondent, and their three children left him. The appellant claimed to have paid the purchase price between 1965–1967. He stayed on the said property until shortly after his marriage in 1971. The deceased apparently occupied the said property at various intervals until his death on 4 August 1990 without the transfer of the disputed property having been effected in the name of the appellant.

[3] The appellant, as plaintiff in the court below, filed this action in 1998 seeking a declaration that he was the beneficial owner of the disputed property and for consequential orders relating thereto. He named the respondent, the administrator of the deceased's estate, as the defendant. His claim was dismissed by the High Court in Penang on 16 April 2003 after a full trial. He appealed against the said decision and filed his record of appeal in due time.

[4] The appeal was only fixed for hearing in this court in the week beginning from 24 November 2008. On 17 November 2008 the respondent's solicitors gave notice of a preliminary objection that the appeal was incompetent as no leave of the Court of Appeal was obtained.

[5] The parties came before us on 24 November 2008 but we could only accommodate them on 27 November 2008. When they returned on 27 November 2008 learned counsel for the respondent informed us that he was raising a preliminary objection for which he had given due notice. Learned counsel for the appellant then averred that encl 10a which he filed the day before was also fixed for hearing that day. To expedite the disposal of the appeal we ordered that both the preliminary objection and encl 10a be heard together.

SUBMISSION

[6] It was submitted on the respondent's behalf that the value of the subject matter of the claim, as pleaded in the statement of defence, was RM248,500. It was the same value assessed for estate duty in the schedule to the letters of administration issued to the respondent (see p 430 of the appeal record). The same figure was also quoted in the respondent's solicitor's letter to the appellant less than three months before the appellant filed his claim (see p 424 of the appeal record). And the learned trial judge also found it significant that the appellant only decided to stake his claim after finding out the value of the disputed property in the letters of administration (see p 56 of the appeal record).

[7] It was contended that the appellant himself testified that he was willing to sell his share of the said property for a good price and that his neighbours had sold similar property for RM160,000 (see p 256 of the appeal record). A half share was only worth RM80,000. There was also evidence that the appellant only offered to pay the respondent RM10,000 for the disputed property (see p 343 at the appeal record).

[8] It was also argued that as the subject matter of the claim had been quantified and valued at well under RM250,000 leave of this court under

s 68 of the CJA was required and the appellant's failure to obtain such leave rendered his appeal incompetent. *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 was cited.

[9] Responding to encl 10a, learned counsel submitted that the respondent, in her application for distribution of the deceased's estate only gave her estimation of the value of the disputed property but the estate duty certificate fixed its value at RM248,500. On the question of the appellant's claim being for a declaration, it was submitted on the authority of *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 1 MLJ 129; [2000] 1 CLJ 1 that item (ii) of the Court of Appeal Practice Direction No 2 of 1996 applies only to declarations respecting matters that have no value attached or those with value that cannot be quantified. This was not such a case.

[10] The appellant's encl 10a was admittedly filed consequent to and in answer to the respondent's notice of preliminary objection. While maintaining the view that the subject matter of his claim was more that RM250,000, the appellant nevertheless felt his application was 'necessary, in the interest of justice, to regularise the appeal if it is found by this honourable court that leave is required'. Learned counsel for the appellant submitted that the respondent herself declared that the value of the disputed property was RM300,000 when applying for distribution of the deceased's estate. Having obtained a limited grant of letters of administration, the respondent offered to sell the same to the appellant. The value of the disputed property at the time of filing the claim on 8 July 1998 and at the trial in 2003 was alleged to be not less that RM300,000. Learned counsel sought to distinguish *Lam Kong* on the facts as in that case there was a formal application with affidavit on the value. Relying on the decision of this court in *Malayan Banking Bhd v Basarudin bin Ahmad Khan* [2007] 1 MLJ 613; [2004] 4 CLJ 596, it was submitted that the value of the subject matter of a claim in the context of s 68(1)(a) should be seen from the appellant's point of view as it was his claim that was dismissed. The respondent's declared value was adopted by the appellant for the purpose.

[11] It was also argued that no leave was required in this case as the appellant's claim was for specific relief. *Soo Hong & Leong Kew Moi & Ors v United Malayan Banking Corp Bhd & Anor* [1997] 1 MLJ 690 was relied on as authority. On delay in making the application, it was submitted that the respondent was not prejudiced as the appeal records had been filed and the respondent was also estopped from raising the objection now when he failed, even at the case management stage, to give any indication that the appellant's appeal was incompetent.

THE PRELIMINARY OBJECTION

[12] It is common ground that the subject matter of the appellant's claim

in the court below is the disputed property. According to the amended statement of claim, the price of the said property was RM18,000 and that the disputed property was sold to the appellant at the price of RM4,500 (which he had allegedly paid) subject to the existing charge to the bank which 'facilities stood at about RM9,000 at the date of the filing of this action' (see amended statement of claim at paras 3, 5, 5(c) and 6). The appellant did not deny that he only offered RM10,000 to the respondent for the disputed property and by comparing the same with the sale of a similar neighbourhood property he had also impliedly valued its worth at RM80,000 for a half share. Therefore in both his pleadings and in evidence the appellant had quantified the value of the subject matter of his claim and it fell short of the RM250,000 prescribed under s 68(1)(a) of the CJA. That section bars such an appeal being brought here unless leave of this court had been obtained.

[13] It was not open to the appellant to now adopt the respondent's estimation of value of the disputed property as its value from his standpoint of view for the purpose of s 68. The case *Malayan Banking Bhd v Basarudin bin Ahmad Khan* relied on for the principle is clearly against him. That was a claim for damages for breach of contract where the parties agreed to have the issue of liability to be tried first and in which the court dismissed the appellant's claim. On appeal the respondent's motion to dismiss it for failure to obtain leave under s 68 of the CJA was held to be frivolous and lacking any merit on the ground that:

> The value of a claim, in the context of s 68(1)(a) is to be viewed from an appellant's standpoint. *Here, the pleaded value of the plaintiff's claim exceeds the statutory trigger*. (Emphasis added.)

[14] Conversely, in our case the value of the subject matter of claim as pleaded was below the statutory trigger. The appellant's own standpoint, as gathered from his own pleading and testimony, put its worth well below the statutory trigger. The appeal was therefore incompetent as it was filed without the leave of this court having first been obtained.

[15] The phrase 'amount or value of the subject matter of the claim' in s 68(1)(a) of the CJA was considered by the Supreme Court in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 1 AMR 785 and it was held that it must be read as the amount or value of the claim filed in the civil suit and not the judgment amount appealed against, that would be the determinant factor in deciding whether leave was necessary. That was a case where the appellant claimed damages totalling RM4,000,000 arising from an accident but only RM62,400 was awarded and it was held that leave of the court was not required for his appeal. The determinant factor

is the value of the subject matter as disclosed in the claim when filed. Applying that test the appellant must necessarily obtain leave of this court to pursue his appeal.

[16] As to whether leave was required in the case of claim for specific relief, as in this case for a declaration, s 68(1)(a) of the CJA makes no exception for such a case. The said provision is clear and unambiguous — see *Mohd Tahir b Mohd Sheriff v Ramlah bt Abdullah* [2004] 6 AMR 165 at p 167. In *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh*, the High Court ordered specific performance of a contract for sale of land against the appellant. His appeal was challenged for being incompetent for failure to obtain leave although the value of the subject matter was less from RM250,000. The appeal was dismissed by this court for being incompetent as the value of the subject matter of the order of specific performance was the purchase price of the land which was RM99,000 and no leave was obtained from the Court of Appeal. Our case is no different except the relief sought was for a declaration.

[17] To alleviate the then prevailing uncertainties faced by legal practitioners, a guideline in the form of the Court of Appeal Practice Direction No 2 of 1996 was issued by then President of this court. It listed out instances when prior consent of this court was not necessary before notice of appeal may be filed 'in cases not connected with a specific amount or value'. Item (ii) of the said guideline reads:

> (ii) Declarations — to declare that the giving of a licence, an act, an omission or decision of a body or person empowered by law is invalid and annulled.

[18] The declaration sought by the appellant in our case do not, by any stretch of the imagination come within the context listed. In any event, learned President of the Court of Appeal who issued the said guideline himself when presiding over a panel of this court was faced with a similar issue in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd*. It was held that item (ii) of the said Practice Direction applies only to declarations respecting subject matters that have no value attached to them or those with values that cannot be quantified. Likewise in our case, the subject matter of the claim had been identified and its value determined, hence the question of declaration became a non-issue. Failure to obtain leave of this court to appeal was thus fatal.

ENCLOSURE 10A

[19] The two main grounds provided for the appellant's application did not appear to support the relief sought. The first stated ground was that the appellant's solicitors were only served with the notice of preliminary objection from the respondent's solicitors on 18 November 2008 and the second

ground was that he was 'of the view that no leave was required as the subject matter in the court below was more than RM250,000 nevertheless the application is necessary, in the interest of justice, to regularise the appeal if it is found by his honourable court that leave is required'. Whether or not to allow leave to appeal is in the discretion of this court, there must be shown good and cogent reasons for its exercise. While the first ground might account for the last minute filing of encl 10a, it did not explain why it could not be done and was not done 5 1/2 years earlier before filing the notice of appeal. It could not possibly be a ground for the exercise of the court's discretion to grant leave to appeal. You cannot resuscitate a dead corpse by blaming your friend for not telling you that it was dead. The appellant must cross the legal threshold before he can be heard in this court. The respondent's failure to give earlier notice of the legal impediment did not attract an estoppel. A point of law can be raised at any stage with or without notice. As for the second ground, with the appellant taking the stand that the value of his claim was more than RM250,000, he provided the court with no material to merit the exercise of our discretion in his favour. If we accepted his stand, no leave was required rendering encl 10a as an exercise in futility. On the contrary, the pleadings and the evidence quantified the value of the claim from the appellant's own standpoint and it was well below RM250,000. We were urged to regularise the appeal but the issue was not done of irregularity. It was a question of jurisdiction which was an issue of substance. In the circumstances there was no alternative but to dismiss the motion which we did.

THE APPEAL

[20] With the preliminary objection being upheld and encl 10a being dismissed, the appeal must necessarily fall to the ground. We accordingly made the necessary order. Both my learned brothers, Abdul Malik bin Ishak and Wan Adnan bin Muhamad JJCA have read this judgment in draft and have agreed to it but the former also has a supporting judgment.

Abdul Malik Ishak JCA:

[21] This is my supporting judgment to that of my learned brother Tengku Baharudin Shah bin Tengku Mahmud JCA. Before the plaintiff appellant's appeal got off the ground, the defendant respondent raised a preliminary objection in regard to the incompetency of the appeal. Section 68(1)(a) of the Courts of Judicature Act 1964 was raised to prevent the appeal from proceeding. That section reads as follows:

68 Non-appealable matters

(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

A (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal ...

B **[22]** If the amount or value of the subject matter of the claim, exclusive of interest, is less than RM250,000 then leave of this court is required before an appeal can proceed to this court. It is undeniable that leave has not been obtained by the plaintiff appellant.

C **[23]** To ascertain the amount or value of the subject matter of the claim, an examination of the facts of the case will now be undertaken. First, it would be necessary to see what the plaintiff appellant was asking for. In the statement of claim, the plaintiff appellant prayed for the following orders and/or reliefs (see pp 108–110 of the appeal record at Vol 1):

D

(1) a declaration that the plaintiff is the beneficial owner of the 1/2 undivided share in Lot 1217 Section 3, Town of Ayer Itam, North East District, Penang together with the house erected thereon bearing postal address 513, Hill Railway Road, Penang ('the said property') previously belonging to the

E plaintiff's brother Bhagwan Singh s/o Sohan Singh now deceased;

(2) an order that the defendant as administratrix of the said deceased be ordered to transfer the said 1/2 undivided share in the said land as such administratrix to the plaintiff by executing a valid and registrable transfer in

F Form 14A within 14 days from the date of the order of this honourable court and in default thereof the senior assistant registrar of this honourable court be directed to do so for and on behalf of the defendant;

(3) an order that the plaintiff shall be at liberty to proceed with the registration of the said transfer referred to in para (2) above at the appropriate land

G registry;

(4) an order directing the Registrar of Land Titles, Penang and/or other appropriate registering authority to do all such things as may be necessary to give effect to the order to be made herein;

H (5) in the meantime an injunction restraining the defendant whether by herself, her servants or agents or otherwise howsoever from causing to be transferred into her name or as she may direct the said 1/2 undivided share in the said property or dealing with the aforesaid share in the said property in any manner whatsoever until the trial of this action. The plaintiff undertakes to pay any damages that the defendant might sustain as a consequence of the

I grant of this injunction in case it is later adjudged that the injunction ought not to have been issued;

(6) costs; and

(7) such further or other relief as may be deemed fit and proper.

[24] The High Court in Penang, after a full trial, dismissed the plaintiff appellant's claim with costs. This was on 16 April 2003. The plaintiff appellant filed his notice of appeal against the decision of the High Court on 12 May 2003. The record of appeal was also filed by the plaintiff appellant on 23 June 2003.

[25] The amended statement of defence would clearly show the amount or value of the subject matter of the claim. It is ideal to refer to para 12(b) of the amended statement of defence at p 187 of the appeal record at Vol 1, which reads as follows:

> (b) At the meeting held on 18 day of March 1998, the defendant informed the plaintiff that the half (1/2) undivided share of the deceased has been valued at RM248,500 by the valuation department and proposed to the plaintiff either to sell his half (1/2) undivided share or purchase the deceased's half (1/2) undivided share;...

[26] And para 12(c) of the amended statement of defence at p 187 of the appeal record at Vol 1, reads as follows:

> (c) It is upon knowing that the half (1/2) undivided share was valued at RM248,500 that the plaintiff alleged that the deceased was holding the half (1/2) undivided share in trust for him and subsequently commenced this action.

[27] Reference to the word 'deceased' would certainly refer to the late Bhagwan Singh s/o Sohan Singh. The deceased's half undivided share amounts to a mere RM248,500.

[28] And the letters of administration granted to the defendant respondent as seen at p 417 of the appeal record at Vol 2 shows an amount or value of the subject matter of the claim to be RM248,500 only.

[29] When the plaintiff appellant was being cross-examined, he said that he would be prepared to sell the property if he got a good price and even though he had not thought about the price he unwittingly said that his neighbours sold their property for RM160,000 (see p 256 of the appeal record at Vol 1).

[30] The Federal Court in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1, held that the legal authority to decide whether leave is required or not under sub-s 1(a) of s 68 of the Courts of Judicature Act 1964 is the Court of Appeal and that being the case the decision of the Court of

Appeal is final. The Federal Court also held that to hold otherwise would lead to absurdity and defeat the 'filter' principle unless an appeal from it is expressly given.

[31] The Federal Court in *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549, held that if an appeal is to be lodged in the Court of Appeal in the circumstances falling within the terms of s 68(1)(a) of the Courts of Judicature Act 1964, leave must first be obtained from the Court of Appeal. The Federal Court also held that the order granting or refusing leave to appeal by the Court of Appeal is final and not appealable to the Federal Court because it is not a judgment or an order within the meaning of s 96(a) of the Courts of Judicature Act 1964.

[32] And, I say by way of an analogy that the decision of the Court of Appeal whether leave is required or not should similarly be final and not appealable.

[33] This court in *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329, dismissed the appeal with costs because the appeal involving specific performance for the purchase of the land valued at RM99,000 was held to be incompetent as no leave to appeal was obtained from this court.

[34] Again, this court in *Mohd Tahir b Mohd Sheriff v Ramlah bt Abdullah* [2004] 6 AMR 165, where the value of the land, after the initial payment, left a balance of RM98,320 and where the appeal was filed without leave of this court pursuant to s 68(1)(a) of the Courts of Judicature Act 1964, forthwith struck out the appeal.

[35] The notice of motion in encl 10a for leave to appeal under s 68(1)(a) of the Courts of Judicature Act 1964 filed at the 11th hour should not be entertained and it should be dismissed forthwith. For these reasons, I will now make those orders as made by my learned brother Tengku Baharudin Shah bin Tengku Mahmud JCA.

Preliminary objection upheld; appeal and application for leave dismissed.

Reported by Kohila Nesan